



7020-02

## **INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 337-TA-946]**

### **Certain Ink Cartridges and Components Thereof**

#### **Commission's Determination to Review an Initial Determination in Part and, on Review, to Affirm a Finding of a Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on October 28, 2015, granting summary determination that 17 defaulting respondents have violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. On review, the Commission affirms with modifications the ALJ's findings regarding the importation requirement. The Commission's determination results in a determination of a violation of section 337. Accordingly, the Commission requests written submissions, under the schedule set forth below, on remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at

<http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 27, 2015, based on a complaint filed by Epson Portland Inc. of Hillsboro, Oregon; Epson America, Inc. of Long Beach, California; and Seiko Epson Corporation of Japan (collectively, "Epson"). 80 FR 4314-16 (Jan. 27, 2015). The complaint alleged violations of section 337 by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof that infringe certain claims of U.S. Patent Nos. 8,366,233 ("the '233 patent"); 8,454,116 ("the '116 patent"); 8,794,749 ("the '749 patent"); 8,801,163 ("the '163 patent"); and 8,882,513 ("the '513 patent"). *Id.* The notice of investigation named 19 respondents. *See id.* The Office of Unfair Import Investigations is a party in this investigation.

Respondents Zhuhai Nano Digital Technology, Co., Ltd. of Guangdong, China and Nano Business and Technology, Inc. of Lake Oswego, Oregon were terminated from the investigation based upon a settlement agreement and consent order. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Certain Respondents Based on a Settlement Agreement and Consent Order; Issuance of a Consent Order (Aug. 5, 2015).

The remaining 17 respondents were found in default. *See* Notice of a Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default (July 10, 2015).

On August 31, 2015, Epson moved for a summary determination of a violation of section 337 by the defaulting respondents and for issuance of a general exclusion order and cease and desist orders. On September 11, 2015, the Commission Investigative Attorney (“IA”) filed a response in support of the motion. No other responses to the motion were received.

On September 16, 2015, the ALJ issued an ID partially terminating the investigation based on Epson’s withdrawal of certain claims. *See* Notice of a Commission Determination Not to Review an Initial Determination Terminating the Investigation in Part as to Certain Claims (Oct. 15, 2015). Claims 1 and 10 of the ’233 patent; claims 9, 14, 18, and 21 of the ’116 patent; claims 1, 18, 49, and 60 of the ’749 patent; claims 1 and 6 of the ’163 patent; and claims 14, 15, and 19 of the ’513 patent remain pending in this investigation. *See* Order No. 12 at 8-19.

On October 28, 2015, the ALJ issued the subject ID granting Epson’s motion for summary determination of violation and recommending the issuance of a general exclusion order and cease and desist orders. *See* Order No. 12. No party petitioned for review of the ID.

The Commission has determined to review only the importation analysis in the ID. Upon review, the Commission affirms a finding that Epson has met the importation requirement. In addition to the specific instances of importation by each defaulting respondent identified in the ID, the record evidence supports a finding that respondent Zhuhai National, through its intermediary respondent Huebon, sold and imported accused ink cartridge control no. 7579 (Group 4 cartridge) in 2014. Seitz 2015 Decl. ¶ 39; Seitz Ex. 1.170. In addition, the record evidence supports a finding that respondent Zinyaw sold accused ink cartridge control no. 7556 (Group 5 cartridge) after they were imported into the United States in 2014. Seitz 2015 Decl. ¶ 156; Seitz Ex. 1.215.

In connection with the final disposition of this investigation, the Commission may (1)

issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond

that should be imposed if a remedy is ordered.

**WRITTEN SUBMISSIONS:** Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the date that the patents expire and the HTSUS subheadings under which the accused products are imported, and provide identification information for all known importers of the subject articles.

Written submissions and proposed remedial orders must be filed no later than close of business on Wednesday, December 30, 2015. Reply submissions must be filed no later than the close of business on Wednesday, January 6, 2015. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 12. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-946") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should

be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Lisa R. Barton

Secretary to the Commission